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Best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights: Study of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Note by the Secretariat

The present report is submitted pursuant to Human Rights Council resolution 32/10.

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Contents

		Page
I.	Introduction	3
II.	General practices in cross-border cooperation between law enforcement	4
III.	International crimes	6
IV.	Cases involving transnational harm and economic actors	8
V.	Conclusions and recommendations	19

I. Introduction

1. In its resolution 32/10, the Human Rights Council recognized the importance of dialogue and cooperation among all stakeholders to ensure the effective implementation of the Guiding Principles on Business and Human Rights, in particular with respect to improving corporate accountability and access to remedy for victims of business-related human rights abuses. Against that backdrop, the Council requested the Working Group to present a study on best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights.

2. Owing to the reference to law enforcement, in the present study the Working Group focuses on cooperation with respect to the investigation and prosecution of criminal and administrative law offences. Since certain jurisdictions do not recognize the application of this body of law to business entities, the report includes studies of cases involving economic actors more generally, which include individual business people. However, given the seriousness of certain cross-border harms, States are encouraged where appropriate to investigate and prosecute companies as such, in addition to natural persons. Sometimes it is not possible to identify key individuals responsible for a crime while it is possible to identify the company. Moreover, even if certain individuals are punished, the company could continue its unlawful conduct; thus, the prosecution of companies may create a needed deterrent beyond that which exists by prosecuting individual actors.

3. Principle 2 of the Guiding Principles encourages States to set out the expectation that all business enterprises domiciled in their jurisdiction respect human rights throughout their operations, and recognize that one way of achieving this is through criminal regimes that allow for prosecutions, no matter where the offence occurs, so long as there is a recognized jurisdictional basis.[1] Furthermore, Principle 26 calls upon States to protect against business-related human rights abuse by taking appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing such harm. For cross-border cases[2] of human rights abuse, in which multiple States are involved in some way, cooperation between these States' law enforcement is key to ensuring any "effective" redress.

4. However, to date, there has been little progress in cross-border cooperation that has led to successful law enforcement action in cases focused on business-related human rights abuses. Much of the existing research has focused on the challenges and obstacles to successful prosecution.[3] Indeed, civil society organizations have tried without success to bring claims to national prosecuting authorities. There remains a lack of political will by States to address business-related human right abuses through the lens of criminal law.

5. In the present report, the Working Group examines how States have cooperated successfully in areas related to criminal law and human rights. It also provides a road map of the key tools that could be used in instances where States are presented with cases relating to cross-border human rights abuse linked to business activity. After a discussion on cross-border cooperation practices that work across many types of offences, there is a focus on how States have worked together effectively to deal with international crimes more broadly. While the examples are few, existing models in this context could be deployed more proactively when economic actors are involved in international crimes and

[1] See A/HRC/17/31, annex.

[2] A cross-border case is one where "the relevant facts have taken place in, the relevant actors are located in or the evidence needed to prove a case is located in more than one State". See A/HRC/32/19/Add.1, box 3.

[3] See, for example, Commerce, Crime and Human Rights Project, "The Corporate Crimes Principles: Advancing Investigations and Prosecutions in Human Rights Cases" (2016), available from www.commercecrimehumanrights.org/wp-content/uploads/2016/10/CCHR-0929-Final.pdf. See also Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (London, 2014).

could also be used when businesses are implicated in general cross-border human rights abuses.

6. Many more cases of successful cooperation to investigate and prosecute economic actors exist in other areas closely linked to human rights. Thus, the report contains an examination of law enforcement practices in the context of other cross-border crimes, such as trafficking in persons, environmental crimes, transnational bribery and corruption, to highlight what types of tools could be used in business and human rights cases. Those cases demonstrate that when States have the political will to act against cross-border harms, they can work together effectively.

7. In the report, the Working Group shows that States already largely possess the tools needed to cooperate effectively with respect to cross-border harms relating to business and human rights. What is needed is a willingness by law enforcement to explore all potential legal avenues for investigating and prosecuting misconduct by economic actors, be it through the lens of international crimes, domestic criminal or administrative offences, or the other types of crimes discussed in the report, where human rights harms occur alongside additional offences. Once the appropriate avenue is decided, the tools discussed can be used, directly or by analogy, to ensure effective cross-border cooperation and, ultimately, greater access to remedy.

II. General practices in cross-border cooperation between law enforcement

8. There are examples of generally applicable best practices involving cross-border cooperation between law enforcement agencies. Those practices are useful techniques that may be deployed regardless of the type of offence being pursued or the type of actor being investigated or prosecuted. The outcome documents of the Accountability and Remedy Project, conducted by the Office of the High Commissioner for Human Rights, laid the groundwork for what should be done to ensure accountability and access to remedy in this regard.[4] To the extent possible, States should implement and adapt those practices in all cases where economic actors are implicated in criminal or administrative offences linked to human rights abuse. In the Working Group's calls for input for the current study,[5] States, national human rights institutions, experts, practitioners, civil society organizations and multilateral institutions provided further information about general practices that should be adopted to ensure effective cooperation in criminal and administrative cases involving business and human rights.

9. States should adopt an appropriate and enabling legal framework that not only prohibits misconduct by economic actors that infringe on human rights but also provides a basis for cooperation between States' law enforcement agencies when violations occur in cross-border cases. Numerous international[6] and regional[7] instruments, as well as bilateral agreements, have detailed provisions on mutual legal assistance and other forms of

[4] See A/HRC/32/19, paras. 24-28 and annex, and paras. 9.1-10.1 and 17.1-18.2; and A/HRC/32/19/Add.1, paras. 32-38 and 62-68. See also www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx for a link to illustrative examples and guidance to improve corporate accountability and access to judicial remedy for business-related human rights abuse, specifically for objectives 9.1-10.1 and 17.1-18.2.

[5] For the present study, the Working Group conducted interviews, held and participated in expert consultations and sent out surveys to numerous stakeholders.

[6] For example, the United Nations Convention against Transnational Organized Crime.

[7] For example, the Treaty on Mutual Legal Assistance in Criminal Matters of the Association of Southeast Asian Nations (2004); the Inter-American Convention on Mutual Assistance in Criminal Matters (1992); and the Convention on Mutual Assistance in Criminal Matters between the member States of the European Union (2000).

international cooperation. Regardless of whether a State is party to those treaties, domestic law should have flexible rules to allow for cooperation in a range of circumstances.[8]

10. In order to send and receive requests for assistance efficiently, a central authority should be established to coordinate the process. That authority should provide easy access to up-to-date contact information for all relevant law enforcement authorities within the State and elsewhere.[9] It should also be adequately funded and staffed with mutual legal assistance specialists who can advise those seeking assistance about core procedural requirements. Ideally, staff would be available to handle requests at all times, have the ability to translate different languages and have the capacity to deal with requests made under different treaties. In addition, central authorities should have a system in place to track the status of requests, prioritize urgent appeals and ensure that deadlines are met.

11. States should encourage law enforcement to cooperate in cross-border cases and adequately train authorities on how best to do so. The United Nations Office on Drugs and Crime (UNODC) has developed many tools to help authorities send and respond to requests for mutual legal assistance.[10]

12. Many practitioners identified joint investigation teams as an effective tool to be used in cross-border cases.[11] The European Union has notably supported such teams through legislative efforts[12] and its institutions such as Eurojust. In the absence of such teams, parallel investigations should be explored in which States coordinate their actions so as to increase each investigation's effectiveness and range of targets. Another useful model concerns the establishment of joint centres of investigation. Under that model, investigators from different States work together at a facility in a single State on the same issue. Such a centre has recently been opened in Austria to combat cross-border trafficking in persons.[13]

13. Although such formal means of cooperating are essential for any cross-border case, it was emphasized repeatedly during the Working Group's consultations that informal cooperation was used much more frequently and often yielded better results. Informal cooperation was faster, less expensive and more flexible than requests for mutual legal assistance or letters rogatory for exchange of information. In addition, informal communication could help build a stronger basis and target a request for formal assistance. While a formal letter to counterparts should be sent, experts stressed that, in practice, a personal meeting or telephone conversation was needed to establish some level of trust as a precursor to a working relationship.

14. Joining networks is also a useful way of building trust with foreign counterparts. International[14] and regional[15] associations of investigators and prosecutors often organize conferences to share best practices and promote cross-border relationships. Those associations also have other resources, such as training documents and online communication tools, to foster cooperation. States are highly encouraged to support and utilize organizations that help with operational matters, such as the International Criminal Police Organization (INTERPOL), the European Police Office (Europol) and the Chiefs of Police of the Association of Southeast Asian Nations (ASEAN).

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[8] For example, the Swiss Mutual Assistance Act of 20 March 1981, governing mutual legal assistance procedures both when an applicable treaty exists and in the absence of one.

[9] The United Nations Office on Drugs and Crime (UNODC) provides an Online Directory of Competent National Authorities, available from www.unodc.org/cld/en/v3/sherloc/cnadir.html.

[10] For example, the UNODC mutual legal assistance request writer tool, available from www.unodc.org/mla/en/index.html. See also UNODC, *Manual on Mutual Legal Assistance and Extradition* (Vienna, 2012), available from www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf.

[11] See www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx for a link to illustrative examples of considerations when developing a joint investigation team agreement.

[12] See, for example, Council Framework Decision 2002/465/JHA, available from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002F0465.

[13] See www.europol.europa.eu/partners-agreements/member-states/austria.

[14] For example, the International Association of Prosecutors.

[15] For example, the South Eastern European Prosecutors Advisory Group, Ibero-American Association of Public Prosecutors and Southern African Regional Police Chiefs Cooperation Organization.

15. Such organizations administer a range of online tools that have proved indispensable for successful cross-border cooperation. For instance, the INTERPOL I-24/7 Network connects law enforcement through a global, secure communication system and allows them to share sensitive and urgent information 24 hours a day, every day. The Network is connected to numerous INTERPOL databases containing millions of records on identifying characteristics of suspects, stolen travel documents and vehicles, and more. In addition, the World Customs Organization provides an online communication system, supporting multiple languages, that allows secure messages to be sent in real time through its Customs Enforcement Network Communication Platform.

16. Regional tools also exist to facilitate information exchange. For instance, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition provides the Organization of American States with a secure electronic communication system.

17. Civil society organizations have become increasingly instrumental in investigating cross-border crimes. In addition to utilizing innovative methods of collecting public information, they have investigated cases on the ground in different jurisdictions and have been involved with initiatives aimed at building capacities for greater cooperation.[16] Recognizing the critical role of such organizations in evidence collection, the Office of the Prosecutor of the International Criminal Court has decided to engage with first responders, such as civil society organizations, journalists and health professionals, in order to enhance their ability to collect admissible evidence.[17] During consultations, the Working Group heard from many such organizations that had given law enforcement evidence of criminal cases linked to business and human rights abuses.

18. In all cases of cooperation, States must ensure that the rights of every person, both natural and legal, are respected and protected. Suspects should never be deprived of essential rights, such as the right against self-incrimination or the right not to be subject to torture or cruel, inhuman or degrading treatment.[18] All fair trial rights should be respected, notably the prohibition of double jeopardy. States should share exculpatory evidence with the accused in other jurisdictions even when not legally obliged to do so. Furthermore, various protections and care should be extended to victims, witnesses and whistle-blowers to ensure no intimidation or retaliation occurs.

19. These basic cross-border policies and practices are effectively used to cooperate for a range of offences. The present report proceeds by highlighting how they have been used to address international crimes and other offences with a nexus to business and human rights.

III. International crimes

20. Law enforcement agencies will often cooperate to address cross-border human rights abuses through the lens of international criminal law. International crimes, such as war crimes, crimes against humanity, genocide, torture, slavery and forced labour, are universally condemned. States have developed strong mechanisms for pursuing individuals implicated in international crimes across borders, including by establishing war crimes units.[19] In addition, the Office of the Prosecutor of the International Criminal Court can help national authorities, upon request, as its official policy is to provide assistance to States that are investigating and prosecuting crimes within the jurisdiction of the Court, and

[16] See, for example, www.ictj.org/news/great-lakes-conference-marks-significant-step-regional-cooperation-fight-against-impunity-5.

[17] See International Criminal Court, Office of the Prosecutor, "Strategic plan: 2016-2018" (2015), paras. 25, 55 and 96.

[18] See, for example, International Covenant on Civil and Political Rights, arts. 7, 9-10 and 14-15. Available from www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

[19] See Human Rights Watch, "The Long Arm of Justice: Lessons from Specialized War Crimes Units in France, Germany and the Netherlands" (2014). Available from www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and.

with other serious crimes under national law.[20] This could involve referring evidence derived from field investigations of the Court relating to economic actors involved in international crimes.

21. However, there have been few active investigations and prosecutions of businesses or individual economic actors, despite numerous allegations implicating both in international crimes. To be sure, mounting a successful case for such crimes is a monumental task, particularly owing to the difficulty in obtaining evidence across borders that meets some jurisdictions' stringent admissibility standards. But no reasonable justification exists for neglecting to address allegations of international crimes committed by economic actors. As was emphasized in the Working Group's consultations, such investigations typically are no more expensive or complicated than cases involving terrorism or organized crime.

22. It was established as far back as the trials held under Control Council Law No. 10 following World War II that companies were capable of committing international crimes. In the case of *United States v. Krupp*, it was shown conclusively that throughout the firm of Krupp and its subsidiaries, prisoners of war had been employed in armament production, in violation of the laws and customs of war. Similarly, in the *Farben* case (*United States v. Krauch*), the tribunal noted that where private individuals, including legal persons, exploit the military occupancy by acquiring private property against the will and consent of the former owner, such action is in violation of international law.[21] While the companies as such were not prosecuted in the trials, the industrialists in charge of the companies were found guilty of committing the war crimes of plunder and the use of slave labour.

23. In the 70 years since those cases, the Working Group is unaware of a single successful prosecution of a company for committing or aiding and abetting an international crime. Numerous attempts have been made at initiating investigations, usually owing to pressure from civil society organizations, yet those investigations languished, often without official explanations for a decision not to prosecute.[22]

24. There have been a few prosecutions of individual businesspeople for cross-border international crimes. One notable case concerns Frans van Anraat, a Netherlands businessman who had supplied chemicals to the regime in Iraq under Saddam Hussein through a web of companies around the world.[23] Those chemicals were subsequently used in attacks against Kurds, killing tens of thousands of people. Originally arrested in Italy in 1989 at the request of the United States of America, van Anraat fled the country after posting bail. In 2004, he was arrested in the Netherlands. The specialized Netherlands International Crimes Unit conducted the case and successfully admitted evidence derived from multiple jurisdictions, including Belgium and the United States. Van Anraat was subsequently found guilty by a Netherlands court for being complicit in war crimes and was ultimately sentenced to 17 years in prison.

25. In addition, a specialized unit in the Norway National Criminal Investigation Service focusing on international crimes successfully prosecuted a businessman for complicity in genocide in Rwanda.[24] Sadi Bugingo was a businessman in Kibungo and had used his wealth and status to support the Interahamwe militia, including by handing out supplies to fighters at his store in the city centre.[25] In investigating the case, Norwegian officials

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[20] See Office of the Prosecutor of the International Criminal Court, "Policy Paper on Case Selection and Prioritisation" (2016). Available from www.icc-cpi.int/iccdocs/otp/20160915_OTP-Policy_Case-Selection_eng.pdf.

[21] See *United States v. Krupp* and *United States v. Krauch* (1948). Available from www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-IX-X.pdf.

[22] See "Corporate Crimes Principles" (footnote 2 above).

[23] See www.haguejusticeportal.net/index.php?id=6332.

[24] See https://trialinternational.org/latest-post/sadi-bugingo/ and www.internationalcrimesdatabase.org/Case/919/Bugingo/.

[25] See 2013 Oslo District Court Judgment, pp. 16-17. Available in Norwegian only from www.asser.nl/upload/documents/20130226T095633-Oslo%20District%20Court%20Judgment%2014-02-2013%20Norwegian.pdf.

requested meetings with authorities in Rwanda. After sending a high-level delegation to Rwanda to discuss the case in person, the police were granted full access to conduct their own investigation in the country and were able to secure around 100 witness testimonies about the case. These proved indispensable at trial, as other forms of evidence were hard to gather decades after the events. In 2013, a district court in Oslo convicted Bugingo and sentenced him to 21 years in prison.

26. The Norwegian authorities successfully prosecuted a cross-border international crimes involving network, crime, and witness-tracking complex and involve events occurring many years earlier. Specialized units devoted to international crimes help in that regard, and networks such as the Genocide Network of the European Union can facilitate cross-border cooperation.[24] What is required is a recognition of the role that companies and other economic actors play in these crimes and a corresponding willingness to pursue these actors through the criminal justice mechanisms.

IV. Cases involving transnational harm and economic actors

27. While there have been few cases in which economic actors have been charged for violating core international crimes, successful investigations and prosecutions are more prevalent for other cross-border harms closely linked to human rights. By detailing the practices that law enforcement agencies use to cooperate in cases of trafficking in persons, environmental crimes, transnational bribery and corruption, the Working Group hopes that States will realize that they already possess a toolkit that can be transposed to the business and human rights context. Thus, in the following sections, the Working Group discusses the legal frameworks, tools and networks that facilitate cooperation between States with respect to each crime and provide cases to illustrate how these work in practice. The cases demonstrate that, when States decide to act, they are able to effectively work together.

A. Trafficking in persons

28. Trafficking in persons is a ubiquitous phenomenon that has rightly been the focus of many Governments and law enforcement agencies around the world. The International Labour Organization (ILO) has estimated that millions of persons are trafficked at any given point in time and that annual profits from trafficking range in the tens of billions of dollars.[25]

29. Trafficking in persons is a serious crime that has been recognized as a serious human rights issue. Numerous international and regional human rights instruments prohibit trafficking, and the General Assembly and Human Rights Council have repeatedly affirmed that trafficking violates and impairs fundamental human rights. Moreover, practices associated with trafficking, such as debt bondage and forced labour, constitute discrete human rights violations.

30. Although trafficking in persons can occur within a single jurisdiction, it often has cross-border elements. Victims are routinely trafficked across borders to be exploited in different States. Likewise, traffickers move between States to evade detection and punishment. Since victims, witnesses, defendants, and actions can all be in different States, there is a growing consensus that the problem cannot be countered by any one country in isolation.

[24] The European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes, otherwise known as the Genocide Network, was established through Council of the European Union Decision 2002/494/JHA "to ensure a close cooperation between national authorities in investigating and prosecuting [international crimes]". See www.eurojust.europa.eu/Practitioners/networks-and-fora/Pages/genocide-network.aspx.

[25] See ILO, *ILO Action Against Trafficking in Human Beings* (Geneva, 2008), p. 1. Available from www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf.

31. Until the adoption in 2000 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Trafficking Protocol), the international legal framework covering trafficking in persons had been a patchwork of treaties addressing slavery,[28] prostitution,[29] labour regulation[30] and human rights.[31] The Trafficking Protocol provided the first comprehensive and internationally agreed-upon conception of trafficking in persons, defining it as "the recruitment, transportation, transfer, harbouring or receipt of persons, by [certain improper] means ... for the purpose of exploitation". States are required to criminalize this conduct and, by virtue of the United Nations Convention against Transnational Organized Crime, liability must also be established for legal persons.[32] Furthermore, both the Convention and its Trafficking Protocol have detailed provisions on many different forms of cross-border cooperation.[33]

32. At the regional level, the Council of Europe Convention on Action against Trafficking in Human Beings is a good example of a legally binding instrument covering trafficking. As with the Trafficking Protocol, it obliges States to criminalize trafficking in persons, ensure that legal persons be held liable for offences and cooperate with each other to investigate and prosecute cross-border cases.

33. Many different multilateral organizations have dedicated teams on trafficking in persons and have created useful resources to facilitate cross-border cooperation. For instance, UNODC has created multiple guides on trafficking in persons and cooperation,[34] maintains an online directory of authorities designated under the Trafficking Protocol,[35] has developed a human trafficking knowledge portal to share legislation and jurisprudence regarding trafficking in persons[36] and implements capacity-building projects with States.[37] INTERPOL provides operational support and has specific tools on trafficking in persons in its I-24/7 network, such as the Human Smuggling and Trafficking message and MINDFIND, to share information regarding trafficking and to run instantaneous checks against INTERPOL databases.[38]

34. Several European tools provide examples of regional initiatives that help cross-border cooperation in cases of trafficking in persons. Under the Schengen system, the Visa Information System and Second Generation Schengen Information System allow participating States to exchange information regarding the movement of people, including by issuing and consulting alerts in real time on missing persons and suspected criminals.

35. Europol administers multiple information exchange systems and an operational project — FP Phoenix — to provide a range of specialist services related to cases of trafficking in persons. Similarly, Eurojust has a project dedicated to trafficking in persons and a case management system that helps coordinate operational activities. The

[28] For example, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).

[29] For example, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1956).

[30] For example, the ILO Forced Labour Convention (1930) (No. 29) and Abolition of Forced Labour Convention (1957) (No. 105).

[31] For example, the Convention on the Elimination of All Forms of Discrimination against Women, art. 6 (1979); Convention on the Rights of the Child, art. 35 (1989); and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, arts. 1-3 (2000).

[32] See Trafficking Protocol, arts. 1 and 5, and United Nations Convention against Transnational Organized Crime, art. 10.

[33] See Trafficking Protocol, arts. 9-13 and 15, and United Nations Convention against Transnational Organized Crime, arts. 7, 15-21 and 26-30.

[34] For example, the Toolkit to Combat Trafficking in Persons (2008), and Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (2004).

[35] Available from www.unodc.org/cld/en/v3/sherloc/ctoadv.html.

[36] Available from www.unodc.org/cld/en/v3/htms/index.html.

[37] See www.unodc.org/southeastasiaandpacific/en/Projects/2009_04/Transnational_Crime.html.

[38] See www.interpol.int/Crime-areas/Trafficking-in-human-beings/INTERPOL-tools.

Organization for Security and Cooperation in Europe also helps ensure efficient cross-border cooperation to deal with trafficking in persons through its Special Representative and Coordinator for Combating Trafficking in Human Beings, who assists with capacity-building and policy guidance.

36. In addition, labour inspectors play a key role in uncovering situations of workplace exploitation. Networks such as the International Association of Labour Inspection and organizations such as the ILO, which has a labour administration and inspection programme, help facilitate cooperation among inspectors, exposing cross-border cases of trafficking in persons.[34]

37. Several cross-border operations have successfully disrupted trafficking in persons. For example, an INTERPOL-led operation in South and Central America with support from 25 countries led to the arrest of over 130 people, the dismantling of several organized criminal networks and the rescue of over 2,500 victims.[35] The operation utilized preparatory training workshops, INTERPOL databases and coordinated checks at several South American airports. It led to both the closure of an adoption agency implicated in the trafficking in children and the arrest of company owners who had instituted slave-like practices in the Plurinational State of Bolivia.

38. In another operation, conducted in Côte d'Ivoire and Ghana and supported by INTERPOL and the International Organization for Migration (IOM), 48 children were rescued and 25 people arrested for exploiting the children in the cocoa and mining sectors.[36] Prior to the rescue, IOM and INTERPOL had developed operational plans and conducted training on how to provide proper assistance to the victims. Specialist officers from the INTERPOL Human Trafficking and Child Exploitation unit, hundreds of law enforcement officers and civil society organizations were involved in the operation.

39. The investigation and prosecution of Kramer Sanitärservice GMBH and N.V. Carantel Motorway Services (now Auto-Grill) in Belgium is a useful example of a cross-border trafficking investigation that clearly implicated business entities.[37] Kramer, a German company, had recruited workers in different countries to provide cleaning services for Carantel in Belgium. Labour inspectors discovered that the workers had been subject to extremely harsh work conditions, sparking an investigation. After noticing irregularities in the workers' German employment forms, the Belgian investigative judge sent a rogatory commission, made up of Belgian police and a labour inspector, to Germany, where there was an ongoing investigation into the same issues. Constructive cooperation between the Belgian and German investigators led to the successful prosecution of both companies and several individuals for human trafficking.

40. The importance of civil society and the media can be seen in cases involving trafficking in persons in South-East Asia. Following investigative reports by several organizations uncovering the use of trafficked workers in the fishing industry, Indonesia initiated prosecutions against Thai employees of an Indonesian company.[38] The Government of Thailand cooperated by sending a multidisciplinary delegation to Indonesia

[34] See ILO, "Labour Inspection and Undeclared Work in the EU" (2013). Available from www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_220021.pdf.

[35] See www.interpol.int/News-and-media/News/2016/N2016-098.

[36] See www.interpol.int/News-and-media/News/2015/N2015-085.

[37] Decision available in French from www.unodc.org/res/cld/case-law-doc/traffickingpersonscasetypes/bel/2012/cour_sup_-_20120925_html/BELGIUM-Case_No_2012-3025.pdf. See also "Corporate Crimes Principles" (footnote 3 above), pp. 5-7.

[38] See "Corporate Crimes Principles" (footnote 3 above), pp. 37-38. See also Environmental Justice Foundation, *Sold to the Sea: Human Trafficking in Thailand's Fishing Industry* (London, 2013); and Kate Hodal et al., "Revealed: Asian slave labour producing prawns for supermarkets in US, UK", *Guardian*, 10 June 2014. Available from www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour.

to assist in the investigation, which included a civil society organization to provide support for the victims.[44]

41. States have effectively investigated cases of trafficking in persons and prosecuted perpetrators by adopting a strong legal framework for the prohibition of trafficking in persons and cross-border cooperation, creating and working with specialized networks to coordinate activities, by collaborating with civil society organizations and by utilizing traditional cross-border cooperation mechanisms. As trafficking in persons is a crime involving transnational human rights abuse and economic actors, the tools used to combat it should be transferable to the business and human rights framework.

E. Environmental crimes

42. The investigation and prosecution of cross-border environmental crimes is another area where States have established well-defined mechanisms for cooperation that may be instructive in the area of business and human rights. Cooperation in cases involving the unlawful movement and disposal of hazardous waste and wildlife and forestry crime shows that when States have the will to prosecute economic actors, they are successful in doing so.

1. Unlawful movement and disposal of hazardous substances and wastes

43. Broadly speaking, the unlawful transport, trade and disposal of hazardous wastes covers the illicit transfer of harmful substances, and the purposeful or accidental dumping of these substances in the environment.

44. The reckless disposal of harmful substances contaminates our air, water and land, putting human health and food security at risk. Improper waste disposal has led to physical injury and death, poisoning and increased rates of cancers, birth defects and neurological disorders. Thus, a range of human rights are implicated when violations take place, most clearly the rights to health and the enjoyment of a safe, clean, healthy and sustainable environment.

45. As with most environmental crimes, the unlawful transfer and disposal of wastes often involves multiple States, typically with waste being sent from more developed countries to less developed countries. Even if waste is disposed of in the State where it was generated, it can still produce negative effects in bordering States if disposed of improperly. Thus, to effectively investigate and prosecute violations, an international response is needed.

46. Several international conventions regulate waste management and call upon States to cooperate with each other to prevent violations. For instance, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal obliges States to prevent and punish the illegal traffic of waste and requires a range of cooperative measures, including the free sharing of information related to the transboundary movement of wastes. The Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade provide additional regulations for the production, use and movement of numerous harmful substances. Furthermore, a range of instruments prohibit pollution of the marine environment and, in some cases, contain provisions on how States should cooperate to enforce that prohibition.[45]

47. Various regional measures add more protections against the unlawful movement and disposal of hazardous wastes. For instance, the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa supplements the Basel Convention and prohibits the import of all hazardous wastes, for any reason, into Africa from non-contracting parties.

[44] See "Thailand's Progress Report on Anti-Human Trafficking Efforts" (2015), p. 6. Available from www.mfa.go.th/main/contents/files/media-center-20150430-161606-980768.pdf.

[45] For example, the United Nations Convention on the Law of the Sea (1982) and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972).

Furthermore, the European Union regulations No. 1013/2006 on shipments of waste and No. 2012/19/EU on waste electrical and electronic equipment ensure further protection against harmful transfers of waste beyond the requirements of the Basel Convention and require member States to impose penalties on businesses that fail to comply.

48. States have a wide range of tools at their disposal to enhance cooperation with each other with respect to investigating and prosecuting waste-based offences. Several initiatives at INTERPOL facilitate closer connections between States and provide support for cross-border operations. For instance, the INTERPOL Pollution Crime Working Group creates a forum for experts and criminal investigators to work together on projects targeting the transboundary movement of hazardous wastes, in particular electronic waste and ship pollution. Project Eden at INTERPOL works with that Working Group and supports States with the exchange of criminal intelligence and regional operations. The World Customs Organization also has a dedicated environmental programme that helps customs agencies around the world tackle the illicit trade in hazardous wastes. Furthermore, the International Network for Environmental Compliance and Enforcement brings together regulators, investigators, prosecutors, judges, civil society organizations and business to implement strategies aimed at improving the enforcement of environmental regulations, including with respect to the management of chemicals and waste.

49. Numerous regional organizations facilitate cooperation between law enforcement agencies in dealing with environmental crime, including the Asian Environmental Compliance and Enforcement Network, Commission on Environmental Cooperation, East African Network for Environmental Compliance and Enforcement, and South American Environmental Compliance and Enforcement Network. The Regional Enforcement Network for Chemicals and Waste connects frontline enforcement officials from 25 countries across North-East, South-East and South Asia to coordinate the control of illegal transboundary waste traffic. In addition, the European Union Network for the Implementation and Enforcement of Environmental Law includes a team on the cross-border shipment of wastes focusing on the implementation of European waste shipment and waste management rules. Beyond capacity-building activities, the Network facilitates joint enforcement projects between States' customs and police authorities.

50. In addition, numerous international and regional information-sharing systems are available to States for investigation of waste-based offences. The INTERPOL Ecomessage system allows law enforcement agencies to securely communicate regarding environmental crime and cross-reference material from other investigations. Similarly, the World Customs Organization has developed ENVIRONET, a communication tool that facilitates information exchange on environmental issues in real time. Regionally, the European Data Interchange for Waste Notification Systems, due to become operational in 2017, will allow authorities in different States to exchange quickly and securely information related to waste shipments within, into and out of the European Union.

51. All of these mechanisms are used by States to cooperate with investigating and prosecuting cases against economic actors, demonstrating that, when States have the political will and work together, they can successfully thwart corporate misconduct.

52. For instance, in 2012, seven European and African countries worked together through the INTERPOL Operation Enigma to target the illegal trade of e-waste.[40] Coordinated checks were done at ports considered to be the source and destination of waste flowing from Europe to Africa, uncovering over 240 tons of illegal e-waste. The operation led to criminal investigations against 40 companies.

53. The World Customs Organization also coordinated operations leading to massive seizures of illegal hazardous waste. In Operation Demeter I, customs agencies from 65 countries worked together to stop the shipment of hazardous wastes from Europe to Asia

[40] See www.interpol.int/News-and-media/News/2013/N20130225.

and Africa.[47] Checks were done at over 300 seaports, with customs administrators notifying each other of suspicious activities through the Organization's secure communication tool. Over 36,000 metric tons of waste were seized during the operation.

54. In 2016, the largest-ever criminal penalty involving deliberate vessel pollution was reached in a plea deal following a case involving cooperation between authorities in the United Kingdom of Great Britain and Northern Ireland and the United States.[48] An engineer for a cruise ship of Princess Cruise Lines Ltd. found the company dumping waste into the ocean and decided to expose the illegality to the British Maritime and Coastguard Agency, which shared the information and other evidence given by the whistle-blower with the United States Coast Guard, which in turn inspected the ship upon arrival in New York. This led to an official investigation by the United States Department of Justice and a $40 million penalty imposed on the company for deliberately polluting the seas and intentionally trying to cover it up.

55. These simple acts of notifying a different jurisdiction of the arrival of a criminal entity and providing evidence given by a whistle-blower led to a massive fine, $1 million of which was shared with the United Kingdom, the notifying State, for projects benefitting the marine environment. Established mechanisms, such as legal instruments providing for cooperation, multilateral networks and online tools to facilitate information exchange dealing with the transfer and disposal of hazardous wastes, have also yielded successful prosecutions of economic actors.

2. Wildlife and forestry crime

56. Wildlife and forestry crime consists of the acquisition, possession or trade of wild fauna and flora contrary to domestic or international law. That includes poaching of endangered animals such as elephants and rhinoceroses for their body parts, and illegal logging.

57. Such activities threaten species and ecosystems, leading to a loss of biodiversity and impacts on the food security and livelihood of communities. Wildlife crime often occurs together with a range of other crimes, including fraud, corruption, money laundering, kidnapping, murder and the trafficking of weapons, drugs and people.[49] Organized criminal groups and non-State armed groups derive significant income from the exploitation and trading of natural resources. Illegal logging itself deprives Governments of billions of dollars of tax revenue and undercuts legitimate, environmentally-responsible forest enterprises. Thus, the total effects of wildlife crime have significant negative impacts for human beings, animals, the environment, business and States themselves.

58. Those impacts are rarely confined to the territory of a single State. Contrary to the trade in hazardous wastes, the illicit trade in wildlife typically flows from less developed countries to more developed countries.[50] Therefore, the transnational nature of wildlife crime calls for a coordinated global response.

59. The most comprehensive international instrument regulating wildlife crime is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires States to set up a system whereby permits are required to import or export listed species. For the most restricted set of animals and plants, trade is prohibited unless scientific and management authorities in both the exporting and importing States authorize

[47] See World Customs Organization, "Operation Demeter: Executive Summary" (Brussels, 2010). Available from www.wcoomd.org/~/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/environmental-crime/ex_sum_demeter_en.pdf?db=web.

[48] See www.justice.gov/opa/pr/princess-cruise-lines-pay-largest-ever-criminal-penalty-deliberate-vessel-pollution.

[49] See INTERPOL, "Environmental Crime and its Convergence with other Serious Crimes" (Lyon, France, 2015).

[50] See Daan van Uhm, "Illegal Wildlife Trade to the EU and Harms to the World", in *Environmental Crime in Transnational Context: Global Issues in Green Enforcement and Criminology* (2016), pp. 43-49.

the transfer in accordance with the Convention. All States parties must prohibit trade in violation of the Convention and penalize the trade or possession of listed species.

60. The European Union implements the Convention through its wildlife trade regulations and became a party to it in 2015. In addition, it extends even stricter protections with respect to certain forms of wildlife crime. For instance, as part of its Forest Law Enforcement, Governance and Trade Action Plan, the European Union Timber Regulation was adopted, prohibiting illegally harvested timber from entering the European Union market. Companies must exercise due diligence when placing timber or timber products into the market unless the wood has a permit under the Convention or the State of export has licensed it under the above-mentioned Action Plan system. States must adopt effective, proportionate and dissuasive penalties to ensure compliance.

61. The European Union also provides strong protection regarding illegal, unreported and unregulated activity, in areas such as fishing.[51] For such activity, a State will receive a "yellow card" warning if it has a problematic fishing industry. If it does not cooperate in fixing the situation, the State could receive a "red card", banning all fish caught in the State from entering the European Union market. Regulations on illegal, unreported and unregulated activity provide for cooperation mechanisms between the European Union and third countries to help the latter comply with the rules.[52] After receiving a yellow card in 2015, Thailand enacted several measures to reform its fishing industry, including by strengthening its human trafficking laws and improving law enforcement's ability to engage in cross-border cooperation.[53]

62. Domestic laws are also important to ensure robust legal protection against wildlife crime. One notable example is the United States Lacey Act. The Act prohibits the trade and possession of a wide range of plants and animals, including all species protected under the Convention, in violation of United States law, state law and foreign law. Legal entities, alongside natural persons, are subject to the law, and the Act has been the basis for several corporate prosecutions. In Australia, the Illegal Logging Prohibition Act is another example of good legislation addressing wildlife crime. The law makes it a criminal offence for businesses to import any illegally-logged timber and requires businesses to exercise due diligence in this regard.

63. The International Consortium on Combating Wildlife Crime is a collaborative effort of the secretariat of the Convention, INTERPOL, UNODC, the World Bank and the World Customs Organization that supports law enforcement in many ways. Beyond providing tools and guidance documents to teach States how to improve their enforcement efforts, the Consortium can deploy wildlife incident support teams to offer on-the-ground assistance. Together with other organizations, the Consortium helps coordinate multi-State operations to detect and stop cross-border wildlife crime.

64. INTERPOL is another organization that provides operational support and tools to enhance State capacities in this area. Under its Environmental Compliance and Enforcement Committee, INTERPOL has working groups on fisheries crime and wildlife crime, both of which, among other activities, bring together specialists in the area to network and exchange expertise. INTERPOL also has projects dedicated to specific types of wildlife crime and supports States by providing intelligence, analysis, and operational coordination. These include Project LEAF on illegal logging and related crimes, Project Predator on Asian big cats and other wildlife species and Project Scale on transnational fisheries crime.

65. Many regional initiatives exist that focus on cross-border law enforcement cooperation for wildlife and forestry crime. A noteworthy example is the Lusaka Agreement Task Force, an organization open to all African States. The Task Force is a permanent law enforcement institution that facilitates cooperation between States parties

[51] For example, Council Regulation (EC) No. 1005/2008, and Commission Regulation (EC) No. 1010/2009.

[52] See https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/cooperation_note_en.pdf.

[53] See www2.fhaimembers.be/press-release-thailands-progress-in-combating-iuu-fishing/.

with investigating wildlife crime, conducts its own intelligence gathering and undertakes joint investigations and enforcement operations in the territories of States parties. The Task Force helped launch — and is an implementing agency for — the independent Wildlife Enforcement Monitoring System project, which provides a secure, web-based platform for information sharing on unlawful trade and analyses reported data to detect trading routes.

66. Regional wildlife enforcement networks facilitate cooperation through capacity-building, ensuring communication between agencies and synchronizing operations. Examples include the ASEAN network, Central African Forests Commission, Central American network, Horn of Africa network, North America Wildlife Enforcement Group, South American network and South Asian network. States are encouraged to join wildlife enforcement networks in their region or create a regional network if one does not exist.

67. Several of these wildlife enforcement networks, along with the Lusaka Agreement Task Force, World Customs Organization, INTERPOL and other organizations, have worked together on a number of massive joint operations to stop wildlife crime. One of these, named Operation COBRA III, was the biggest ever coordinated international law enforcement operation targeting the illegal trade in endangered species.[54] It involved the cooperation of 62 countries across Africa, America, Asia and Europe. Utilizing the communication system of the World Customs Organization to exchange intelligence, the operation led to hundreds of arrests and the seizure of tens of thousands of illegal wildlife items.

68. INTERPOL Operation Stingray II is another good example of State cooperation. The operation focused primarily on the illicit fishing activity in the Southern Ocean of six vessels that had been believed to be operating in a network to catch high-value fish illegally and ship them to North American and European markets through a complex chain of countries. Forty-nine States, as well as civil society organizations, were involved in the operation, exchanging information to track the ships and coordinating on how to investigate the owners and operators behind them. With the support of an INTERPOL investigative support team, prosecutors in Sao Tome and Principe secured the conviction of three crew members.[55] The operation also led to criminal investigations and prosecutions being brought against companies and individuals in at least seven other countries. In Spain alone, nine companies faced a range of sanctions, including fines totalling more than €17 million.[56]

69. In the area of illegal logging, the INTERPOL-led Operation Amazonas was successful in targeting criminal groups linked to illegal logging in Peru, involving the cooperation of Brazil, China, the Dominican Republic, Mexico and Peru. Coordinated border inspections and intelligence exchange led to the uncovering of violations by individuals and companies and the seizure of over $20 million worth of wood. The success of the operation led to a subsequent investigation (Amazonas II) covering Central and South America, with the cooperation of 12 Latin American countries. That subsequent operation resulted in hundreds of arrests and the seizure of over $45 million worth of timber.[57]

70. The above cases emphasize the importance of utilizing networks to cooperate in cross-border cases. Highly successful operations have been conducted when international and regional organizations coordinate with each other and with domestic authorities and civil society. By using the wide range of tools provided by those networks, including on-the-ground training and information exchange platforms, many economic actors have been caught and prosecuted for engaging in cross-border misconduct.

[54] See Europol, "Europol Supports Largest Ever Coordinated Operation Against Wildlife Crime" (18 June 2015). Available from www.europol.europa.eu/newsroom/news/europol-supports-largest-ever-coordinated-operation-against-wildlife-crime.

[55] See INTERPOL, "INTERPOL-supported illegal fishing investigations lead to prosecution" (13 October 2015). Available from www.interpol.int/News-and-media/News/2015/N2015-160.

[56] See www.fish-i-africa.org/vidal-armadores-banned-fined-and-awaiting-trial/.

[57] See www.interpol.int/Crime-areas/Environmental-crime/Operations.

C. Transnational bribery and corruption

71. Transnational bribery and corruption is another area where cross-border cooperation has been used to successfully investigate and prosecute businesses. States parties to the United Nations Convention against Corruption have universally recognized the harm that transnational bribery causes to the public, and the Office of the United Nations High Commissioner for Human Rights (OHCHR) and Human Rights Council have noted the link between corruption and human rights, as the payment of bribes or embezzlement of public funds are often linked to underlying human rights abuses.[58] The investigation and prosecution of those crimes typically requires the need to detect and track the illegal flows of money across State lines; thus, States need to cooperate to determine where a bribe has been paid and where the illicit proceeds subsequently have moved.

72. The existence of key legal frameworks provides an enabling environment for cross-border cooperation with respect to corruption. In furtherance of treaty commitments, States have created national offences focused on transnational bribery. In addition, relevant treaties oblige States to provide for the criminal or administrative liability of legal persons; hence, there is an explicit recognition that businesses will be the subject of enforcement actions.

73. The United Nations Convention against Corruption, for instance, requires States to establish liability for legal persons and to provide penalties for foreign bribery within their national legislation.[59] The convention also explicitly recognizes the need for mutual legal assistance and cooperation between law enforcement.[60] Article 48 requires States to cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by the Convention, and article 49 obliges States to consider forming joint investigative bodies for cross-border cases.

74. The Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is another instrument that requires States to criminalize the bribing of foreign public officials, establish liability for legal persons and cooperate with one another to enforce its provisions.[61] It was the first anti-corruption treaty to focus on the supply side of bribery in that it requires home States of corporations to hold business entities accountable for bribes paid overseas. It has also been instrumental in making States refine their national laws to ensure companies can be held liable.[62]

75. Both the OECD Convention and United Nations Convention against Corruption contemplate peer learning, as their respective review mechanisms allow States to review each other's implementation of the conventions.[63] OECD has established the Working Group on Bribery, which meets regularly to discuss progress that member States have made with the implementation of its Convention. The Working Group allows States to share experiences and good practices in enforcing foreign bribery laws and provides a robust peer

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[58] See, for example, OHCHR, "The Human Rights Case Against Corruption" (Geneva, 2013), available from www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/HRCaseAgainstCorruption.pdf; and Human Rights Council resolution 23/9.

[59] See United Nations Convention against Corruption, arts. 16 and 26.

[60] Ibid., arts. 5 (4), 14 (5), 37 (5), 42-51 and 53-62.

[61] See Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, arts. 1-3 and 9-11. Available from www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

[62] See OECD, *The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report* (2016), p. 14. Available from http://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf.

[63] See UNODC, "Mechanism for the Review of Implementation of the United Nations Convention against Corruption", available from www.unodc.org/unodc/en/treaties/CAC/IRG.html; and OECD Working Group on Bribery in International Business Transactions, available from www.oecd.org/corruption/anti-bribery/anti-briberyconvention/oecdworkinggrouponbriberyininternationalbusinesstransactions.htm.

review process where States evaluate each other's implementation of the Convention on an ongoing basis. Under the OECD process, each State is subject to continuous monitoring, whereas the United Nations Convention against Corruption process provides a staggered review where not every State party is assessed regularly.

76. Several networks exist for practitioners to share useful practices and support each other in operations fighting corruption and recovering assets. For instance, the Camden Assets Recovery Interagency Network, hosted by Europol, brings together law enforcement officers and judicial experts from 54 States and 9 international organizations to share expertise and provide a network whereby members can cooperate to recover assets from unlawful financial transactions including corruption.[64] The effectiveness of the Network model has led to similar networks being established in the Asia Pacific region, Southern Africa and West Africa.[65] The Corruption Hunters Network is another useful group in the fight against corruption, which brings together police and prosecutors from nearly 20 States (and all regions of the world) to exchange experiences regularly and discuss how best to coordinate efforts.[66] The World Bank similarly brings together experts in the field, including non-State actors, every two years as part of its International Corruption Hunters Alliance.

77. A new initiative spearheaded by the United Kingdom, in partnership with Australia, Canada, Germany, New Zealand, Singapore, Switzerland and the United States, will create a permanent centre through which States will be able to cooperate in cases of grand corruption involving international dimensions. The International Anti-Corruption Coordination Centre will be based in London and will establish and implement an operating model based on international cooperation through intelligence collection and analysis, practical actions and case coordination.[67]

78. International financial institutions can play an important role in terms of sharing information with national authorities. For instance, the World Bank Integrity Vice Presidency has helped generate successful domestic prosecutions through its referral system. The Integrity Vice Presidency conducts investigations of World Bank-financed projects to determine if any project-related corruption or fraud has occurred. If, in the course of its investigations, the Bank believes that national laws have been violated, it can provide information to national law enforcement to initiate criminal investigations and prosecutions. The Stolen Asset Recovery Initiative, run jointly with the UNODC, works with States to build capacities and, when requested, assists with specific asset recovery cases.

79. The above-mentioned Initiative has several online tools that can help States recover assets that have been unlawfully transferred overseas. For instance, it compiles asset recovery guides for key jurisdictions around the world.[68] It has also created an in-depth Asset Recovery Handbook that provides guidance on all stages of asset recovery.[69] The OECD Typology on Mutual Legal Assistance in Foreign Bribery Cases also provides detailed guidance on cooperation in foreign bribery cases.[70] In addition, the Group of 20 has

[64] See http://carin-network.org/.

[65] See http://carin-network.org/other-information.

[66] See www.norad.no/en/front/thematic-areas/democracy-and-good-governance/corruption-hunters/.

[67] See INTERPOL, "Tackling corruption requires collective response, INTERPOL Chief tells international summit" (12 May 2016). Available from www.interpol.int/en/News-and-media/News/2016/N2016-060/; see also www.gov.uk/government/news/pm-announces-new-plan-at-anti-corruption-summit-to-recover-stolen-assets.

[68] See http://star.worldbank.org/star/ArabForum/asset-recovery-guides.

[69] See World Bank and UNODC, *Asset Recovery Handbook: A Guide for Practitioners* (Washington, D.C., 2011). Available from https://star.worldbank.org/star/sites/star/files/asset_recovery_handbook_0.pdf.

[70] See OECD, *Typology on Mutual Legal Assistance in Foreign Bribery Cases* (Paris, 2012). Available from http://www.oecd.org/daf/anti-bribery/TypologyMLA2012.pdf.

elaborated a set of High-Level Principles on Mutual Legal Assistance, which detail the basic practices for cross-border cooperation in foreign bribery cases.[71]

80. Many information exchange platforms also exist to facilitate cross-border cooperation. For instance, The INTERPOL Secure Communications for Asset Recovery system provides an encrypted channel to allow law enforcement officers in its Global Focal Point Network on Asset Recovery to exchange sensitive data during investigations.[72] The Financial Action Task Force of Latin America has also developed a secure platform to exchange information as part of its Asset Recovery Network.[73]

81. These networks and tools have been successfully used by law enforcement in numerous cross-border cases. For example, connections made through several networks, including the Corruption Hunters Network, facilitated the trust needed for Brazilian, French and Swiss authorities to cooperate in investigating and prosecuting the French firm Alstom for bribing officials in Brazil to win a contract to supply electrical equipment for the São Paulo power company.[74] Information provided by law enforcement in France and Switzerland, including evidence of large deposits in Swiss bank accounts related to the bribery, led to a settlement of R$60 million paid by the firm.

82. Parallel investigations and prosecutions in the Brazil, Switzerland and United States recently led to what was described as the largest-ever global foreign bribery resolution in history.[75] Through significant cooperation between the three States, investigators uncovered a massive bribery scheme conducted by Odebrecht S.A. and Braskem S.A. to win contracts in Latin America and Africa. The two companies pled guilty to the charge of conspiracy to bribe foreign officials and agreed to pay at least $3.5 billion in penalties, which was shared among the Governments of the three countries.

83. Through the use of mutual legal assistance, the United States Department of Justice and Nigerian Economics and Financial Crimes Commission successfully prosecuted multiple cases against companies trying to bribe officials of the Government of Nigeria. In 2008, Willbros Group Inc. and its subsidiary, Willbros International Inc., agreed to pay $22 million in criminal penalties relating to a bribe paid in Nigeria to secure rights to a pipeline project.[76] In addition, in 2010, the Department of Justice and the Commission conducted parallel investigations into a consortium of four companies, including Kellogg Brown & Root LLC, that had allegedly bribed Nigerian officials to win contracts for natural gas projects in Nigeria.[77] Significant cooperation between the two countries, and by authorities in France, Italy, Switzerland and the United Kingdom, ultimately led to the United States and Nigeria receiving $1.5 billion and $126 million, respectively, in fines and disgorgement.[78]

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[71] See www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf.

[72] See www.interpol.int/Crime-areas/Corruption/International-asset-recovery.

[73] See www.gafilat.org/content/cooperacion/#1 (Spanish only).

[74] See R. Messic, "Furthering Cross-Border Cooperation to Fight Corruption" (2015), available from https://globalanticorruptionblog.com/2015/12/23/furthering-cross-border-cooperation-to-fight-corruption/, and A. Fontana, "Transforming Brazil's anti-corruption record — Interview with Dr. Silvio Antonio Marques" (2017), available from www.cmi.no/publications/6155-transforming-brazils-anti-corruption-record.

[75] See United States Department of Justice, "Odebrecht and Braskem Plead Guilty and Agree to Pay at Least $3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History" (21 December 2016). Available from www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve.

[76] See United States Department of Justice, "Willbros Group Inc. Enters Deferred Prosecution Agreement and Agrees to Pay $22 Million Penalty for FCPA Violations" (14 May 2008). Available from www.justice.gov/archive/opa/pr/2008/May/08_crm_417.html.

[77] See J. Holtmeier, "Cross-Border Corruption Enforcement: A Case for Measured Coordination Among Multiple Enforcement Authorities", *Fordham Law Review*, Vol. 84, Iss. 2 (2015), pp. 493 and 498-99. Available from http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5143&context=flr.

[78] Ibid. See also United States Department of Justice, "Kellogg Brown & Root LLC Pleads Guilty to Foreign Bribery Charges and Agrees to Pay $402 Million Criminal Fine" (11 February 2009).

84. Successful prosecutions have also resulted from cooperation between the World Bank Integrity Vice Presidency and national authorities. For instance, in 2011, the Norwegian National Authority for the Investigation and Prosecution of Economic and Environmental Crime successfully prosecuted three employees of the Norwegian firm Norconsult after the Integrity Vice Presidency referred findings from its own investigation into the company's bribery to win a contract for a World Bank-financed water supply and sanitation project in the United Republic of Tanzania.[79]

85. The above cases show how successful States can be when they cooperate to investigate and prosecute cross-border offences. Through a mixture of multilateral networks, parallel investigations and formal and informal cooperation, and by working with multilateral institutions, States have secured massive penalties from companies for their overseas bribery.

V. Conclusions and recommendations

A. Conclusions

86. **As the present report indicates, when States identify a key harm that implicates the private sector, they are able to successfully develop processes and legal frameworks to promote cross-border law enforcement. Upon agreeing that certain cross-border harms, such as trafficking in persons, toxic dumping, wildlife and forestry crime, bribery and corruption, are global problems that require a coordinated global response, States develop and utilize innovative tools to foster effective cross-border cooperation. Each of those crimes affects human rights, and the Working Group applauds those efforts by States that have prevented, detected and punished violations committed by legal or natural persons. Law enforcement still faces many obstacles in pursuing cross-border cooperation in the areas outlined above, but our research and consultations revealed that States are working to continuously refine and improve their methods of cooperation, which demonstrates a willingness to find solutions.**

87. **However, despite numerous allegations implicating business in classic human rights violations and international crimes, investigations and prosecutions against companies are almost non-existent.**

88. **Thus, as a key principle, cross-border, business-related human rights abuses amount to international crimes, those cases should be prioritized and treated the same as other international criminal cases and States should use the existing tools at their disposal, including war crimes units.**

89. **To the extent that cases involving business-related human rights abuse might intersect with the types of crimes or regulatory offences outlined in the report, prosecutors should also pursue these charges. For instance, if a company that is alleged to have engaged in a human rights offence has also paid a bribe, a prosecutor might pursue a corruption claim.**

90. **However, such a patchwork approach will inevitably leave some human rights harms unaddressed. Law enforcement should explore all potential legal avenues available when faced with cross-border harms committed by economic actors, including by framing the harms in terms of domestic criminal or administrative offences.[80] This involves translating what may be labelled a human rights abuse as a**

Available from www.justice.gov/opa/pr/kellogg-brown-root-llc-pleads-guilty-foreign-bribery-charges-and-agrees-pay-402-million.

[79] See World Bank, "World Bank Welcomes Norwegian Convictions of Three Former Employees of Norwegian Company Norconsult in Bribery Case in Tanzania" (22 July 2011). Available from www.worldbank.org/en/news/press-release/2011/07/22/world-bank-welcomes-norwegian-convictions-former-employees-norwegian-company-norconsult-bribery-case-tanzania.

[80] See "Corporate Crimes Principles" (footnote 3 above), pp. 42-43.

domestic offence — for example, forced labour can also constitute false imprisonment, and crimes against humanity can involve offences such as murder and assault. However, in all cases, any charges should reflect the gravity of the offence; thus, prosecutors should consider any human rights impacts of the crime when deciding the charges to be brought against an economic actor.

91. States are thus urged to collaboratively investigate and prosecute all cases where economic actors engage in conduct adversely impacting internationally recognized human rights to the extent that such harms arise from prohibited conduct within a national jurisdiction.

92. To investigate and prosecute these charges properly, States should apply the tools and methods discussed above, either directly or by analogy, to facilitate cooperation. Such means, as discussed in the guidance from the Accountability and Remedy Project and elaborated upon in the present report, have proved to generate effective results in cross-border cases. The recommendations below briefly recount those practices.

B. Recommendations

93. States should adopt a legal framework that prohibits conduct causing or contributing to human rights violations and imposes liability on legal entities. Moreover, States are encouraged to ratify bilateral and multilateral agreements that provide a basis for cross-border cooperation and to ensure that their domestic law allows for cooperation to take place.

94. Specialized investigative and prosecutorial units should be created that have expertise in cross-border human rights cases and business associations. If war crimes or other types of units already exist, those units should be encouraged to address business-related human rights cases alongside those involving individual wrongdoers.

95. A central authority should be established to channel all requests for cross-border assistance made under different treaty regimes and other legal bases. This authority should be accessible at all times, provide contact information for domestic and foreign authorities and be staffed by mutual legal assistance specialists who are knowledgeable about procedural requirements and can work in several languages. A system should be in place that tracks the status of requests, prioritizes urgent appeals, and ensures that deadlines are met.

96. States should encourage authorities to cooperate and provide training on sending and receiving requests for assistance. Requests for mutual legal assistance should include relevant contact information, details on evidence admissibility requirements, and any confidentiality and timeline requirements. Before rejecting any requests, consultations should be had with the requesting State to try to overcome any issues.

97. Informal cooperation should be used to obtain publicly available information or other evidence that does not require coercive means by investigators. Such officer-to-officer communication can help target subsequent requests for mutual legal assistance or accelerate responses to urgent formal requests.

98. If possible, States should consider conducting investigations in foreign jurisdictions if consent can be obtained. Law enforcement agencies are particularly encouraged to establish joint investigation teams using agreements covering all aspects of investigation, including division of labour and budgetary matters. Parallel investigations and joint centres of investigation should also be coordinated to minimize duplication of work and maximize efficiency.

99. States are encouraged to join, support and work with regional and international networks that promote cooperation and coordinate cross-border actions. These networks can operate well when they are informal, in that they serve to build relationships without requiring the creation of a new institution.

100. **States are also encouraged to, as appropriate, provide technical assistance and resources to States that may not have the institutional capacity for cross-border investigations. The use of networks and organizations such as INTERPOL allow for effective resource sharing to overcome an individual State's lack of resources.**

101. **Law enforcement agents should learn which online tools (in particular information sharing networks) are available to them and support their use. These databases and communication tools have proven to be indispensable in cross-border cases.**

102. **States are encouraged to be receptive to and cooperate with civil society organizations that help investigate cross-border cases. Civil society organizations are often able to amass detailed dossiers on cases by using innovative methods, conducting investigations in remote places where law enforcement may be unable to go, and gaining the trust of certain witnesses. At the same time, those organizations should take care to meet admissibility standards when collecting evidence and be careful not to jeopardize official investigations, for instance by publicizing matters prematurely. When organizations are instrumental in bringing cases, law enforcement should consider maintaining a relationship with these organizations once official investigations are under way, as the organizations could be helpful in obtaining further evidence. States should also consider ways to better train organizations with identifying crimes and securing evidence.**

103. **In any investigation or prosecution, all actors must ensure that the rights of every person are respected and protected. Protections and care should be extended to victims, witnesses and whistle-blowers to ensure no added harm occurs. Furthermore, suspects should never be deprived of essential rights, particularly those relating to the fair administration of justice.**